UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAUL SIQUEIROS, et al.,

Plaintiffs,

v.

GENERAL MOTORS LLC,

Defendant.

Case No. 16-cv-07244-EMC

ORDER GRANTING PLAINTIFFS' MOTION TO CLARIFY THE CLASS DEFINITION, AND DENYING PLAINTIFFS' MOTION FOR PUNITIVE DAMAGES

Docket Nos. 587, 589

I. INTRODUCTION

This is a vehicle defect class action in the post-trial stage. Plaintiffs are class members from Idaho, California, and North Carolina who have sued Defendant General Motors LLC ("GM"). Plaintiffs allege that GM sold a defective engine model in certain vehicles ("Class Vehicles") that had an excessive oil consumption problem ("Oil Consumption Defect").[1] The Court certified three claims for trial: (1) breach of implied warranty under California's Song Beverly Consumer Warranty Act, (2) breach of implied warranty of merchantability under North Carolina law, and (3) violation of the Idaho Consumer Protection Act "ICPA." The three-week jury trial was held from September 13, 2022 to October 4, 2022. The jury, which found in favor of Plaintiffs on all three claims, awarded $2,700.00 in damages per vehicle.

[1] The Class Vehicles are defined as: 2011-2014 Chevrolet Avalanches, Silverados, Suburbans, and Tahoes, and 2011-2014 GMC Sierras, Yukons, and Yukon XLs with Generation IV engines manufactured on or after February 10, 2011. Any vehicle that has already received an adequate piston ring replacement is excluded from the Class Vehicle definition. Final Jury Instructions Order (Docket No. 554) at 9-13.

Now pending before the Court are Plaintiffs' motions for clarification of class definition (Docket No. 587) and for punitive damages under the ICPA (Docket No. 589).[2] As set forth below, the Court **GRANTS** Plaintiffs' motion for clarification of the classes. To require continued ownership through the verdict date or beyond is improper because former Class Vehicle owners who sold their vehicles after the Class Notice Date may reasonably have understood the class definition to require current ownership only as of May 23, 2022, the date of class notice, given that no cut-off date was specified in the notice. The three class definitions will therefore reflect that a class member must have owned a Class Vehicle as of May 23, 2022. The Court **DENIES** Plaintiffs' motion for punitive damages under the ICPA because Plaintiffs' interpretation of the ICPA conflicts with the Seventh Amendment and Plaintiffs failed to prove by clear and convincing evidence that Defendant's conduct was "oppressive, fraudulent, malicious or outrageous" and a case of "repeated or flagrant violations."

II. RELEVANT BACKGROUND

A. Factual Background

Plaintiffs allege that the engines in the Class Vehicles contain defective piston ring parts, which leads to excessive oil consumption and engine damage. *See* Eighth Amended Complaint ("8AC") ¶¶ 96–104. The Court certified three claims for trial: (1) breach of implied warranty under California's Song-Beverly Consumer Warranty Act, (2) breach of implied warranty of merchantability under North Carolina law, and (3) violation of the Idaho Consumer Protection Act. *See* Docket No. 354 (Order Granting in Part and Denying in Part GM's Motion for Decertification) at 4–5.

Beginning with the original complaint, and in every complaint thereafter, Plaintiffs included in their request for relief for "GM to pay actual and statutory damages (including punitive damages) and restitution to Plaintiffs and other Statewide Class members, as allowable by law." *See, e.g.*, Docket No. 2 (Complaint) at 108; 8AC at 99. But in the joint pretrial statement,

[2] In addition to Plaintiffs' motions, General Motors moved for judgment as a matter of law and for decertification. *See* Docket Nos. 592 and 594. The Court addresses GM's post-trial motions in a separate order.

Plaintiffs did not seek or otherwise reference punitive damages. Nor did Plaintiffs reference punitive damages in their trial brief. *See* Docket No. 450 (Pls. Trial Brief). Aside from the complaints, the only other time Plaintiffs raised the issue of punitive damages was at the very close of the August 26, 2022 pretrial conference, shortly before trial:

> Mr. Ferri: For years for our Idaho claim we have pled relief for attorneys' fees and costs and damages, and we omitted that from what is included in the most recent complaint, which GM responded to. We omit that from the prayer for relief in the pretrial statement. We just want to make clear that we are still seeking that. We want to put that on the record. We raised that with GM yesterday. They thought it was improper. I don't see any prejudice. They have known we have pled that for years, and so we are still seeking it.
>
> THE COURT: You have made your record. What the consequences are, I don't need to address at this point.
>
> Mr. Godfrey: Well, your Honor, just in fairness, this is the first we have heard of it. They have specific requests for punitives by systemic counts, but they don't have it for Idaho. They have a general omnibus request that incorporates those they made for punitives. First, they don't have an Idaho request for punitives. Secondly, it is not [in] the filing statement. We don't have a jury instruction on it. We don't have a verdict form on it. […]
>
> Mr. Ferri: There should be no jury instruction, Your Honor. It is an issue for punitives. It's an issue for the Court. Attorneys' fees is not discretionary. Costs are not discretionary[;] if the Plaintiff prevails there is no jury instruction. There is no prejudice. It is what it is.
>
> THE COURT: Well, all right. Since you are not putting it to the jury, I don't have to resolve this question . . . I can hear there may be an argument, depending on what the verdict is, that's been waived or precluded for some reason; but we will cross that bridge if and when we get there. *Id.* at 116:4-9.

See Docket No. 492 (Aug. 26, 2022 Hr'g Tr.) at 114:18–116:9.

The Court issued proposed jury instructions on September 14, 2022, and gave the parties an opportunity to object on the record and out of the jury's hearing before the instructions were finalized. *See* Docket No. 509. Although the proposed jury instructions did not include any instruction on a claim or award for punitive damages, neither party sought to include an instruction relating to punitive damages. *See* Docket Nos. 514, 516. As a result, the final jury instructions did not mention punitive damages. *See* Docket No. 554 (Final Jury Instructions

Order) at 27.[3]

The final jury instructions did, however, include each class definition. *See id.* at 3. Jury Instruction No. 2 informed the jury that the California Class is defined as "all current owners or lessees of a Class Vehicle that purchased or leased the vehicle in new condition in the State of California"; the Idaho Class is defined as "all current owners or lessees of a Class Vehicle that was purchased or leased in the State of Idaho from a GM-authorized dealer," and the North Carolina Class is defined as "all current owners or lessees of a Class Vehicle that was purchased or leased in the State of North Carolina." *Id.*

The trial proceeded with three class claims. First, California class representative Garet Tarvin asserted a breach of implied warranty claim for violation of the Song-Beverly Consumer Warranty Act. *See* PTC Order at 1. Plaintiff William Davis, Jr., who represents the North Carolina Class, asserted a claim for breach of implied warranty under North Carolina law. *Id.* Finally, Plaintiff Gabriel Del Valle, on behalf of the Idaho Class, asserted a claim for violation of the Idaho Consumer Protection Act. *Id.* The jury found in favor of Plaintiffs on all three claims and awarded $2,700.00 in damages per vehicle.

III. LEGAL STANDARDS

A. Class Clarification

Federal Rule of Civil Procedure 23 holds that "[a]n order that grants or denies class certification may be altered or amended before final judgment." Fed. R. Civ. P. 23I(1)(C). Under Rule 23(c)(1)(C), the district court has broad discretion to amend a class certification order at any time before final judgment. *See Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 983 (9th Cir. 2007). "The purpose of Rule 23(c)(1)(C) is to afford district courts the latitude to amend an existing class certification order, or an order denying class certification, in light of subsequent developments." *Friend v. Hertz Corp.*, No. C-07-5222-MMC, 2014 WL 4415988, at *2 (N.D.

[3] Jury Instruction No. 23, the damages instruction, provided that: "Damages means the amount of money that will reasonably and fairly compensate the Plaintiffs and Class members for any injury you find was caused by GM . . . In deciding this amount, you will consider only the Plaintiffs' economic loss, if any, caused by GM. The Plaintiffs do not claim damages for personal injury or emotional distress." *See* Docket No. 554 at 27.

Cal. Sept. 8, 2014); *see also Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 160 (1982) (holding that "after a [class] certification order is entered, the judge remains free to modify it in light of subsequent developments in the litigation").

B. Punitive Damages

"Claims for punitive damages are substantive in nature and Idaho law is controlling." *Strong v. Unumprovident Corp.*, 393 F. Supp. 2d 1012, 1025 (D. Idaho 2005). Punitive damages may be awarded if the party proves "by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted." Idaho Code § 6-1604(1).

IV. DISCUSSION

The questions here are whether the class definition should be clarified to expressly provide that owners who sold their vehicles after the close of the trial are out of the class and whether Plaintiffs are entitled to punitive damages under Idaho law. As set forth below, the Court finds that clarification is warranted but that Plaintiffs are not entitled to punitive damages.

A. Class Clarification

Both parties agree that the class definition should be clarified to address the status of class members who sold their Class Vehicle at some point after receiving notice of the lawsuit last May. *Cf. In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 302 F.R.D. 448, 461 (N.D. Ohio 2014) (holding that a class period with no cut-off date "means there will be class members . . . wholly unaware their rights will be decided in this litigation. This is not permissible"). But the parties disagree as to whether these former owners—or, to use the parties' parlance, "Post-Notice Sellers"—should be included or excluded from the class.

The current class definition is:

> (1) All current owners or lessees of a Class Vehicle that was purchased or leased in new condition in the State of California (the "California Class");
> (2) All current owners or lessees of a Class Vehicle that was purchased or leased from a GM-authorized dealer in the State of Idaho (the "Idaho Class"); and
> (3) All current owners or lessees of a Class Vehicle that was purchased or leased in the State of North Carolina (the "North Carolina Class").

Docket No. 548 (Final Jury Instrs.) at 3.

Plaintiffs' proposed clarification of the class definition is:

> (1) **California Class:** All current owners or lessees of a Class Vehicle ***as of May 23, 2022*** that was purchased or leased in new condition in the State of California.
> (2) **Idaho Class:** All current owners or lessees of a Class Vehicle ***as of May 23, 2022*** that was purchased or leased from a GM-authorized dealer in the State of Idaho.
> (3) **North Carolina Class:** All current owners or lessees of a Class Vehicle ***as of May 23, 2022*** that was purchased or leased in the State of North Carolina.
>
> Docket No. 587 (Class Clarif. Mot.) at 3 (emphasis added). May 23, 2022 is the date of the Class Notice.

Defendant's proposed clarification of the class definition is:

> All current owners or lessees of a Class Vehicle ***as of May 23, 2022*** that was purchased or leased *[insert state-specific language]* ***and who continue to own or lease their Class Vehicle through the date of entry of a final, non-appealable judgment in this action.***

Docket No. 599 (Class Clarif. Opp.) at 2 (emphasis added). In other words, under Plaintiffs' proposal, class members who sold their vehicles after last May would remain in the class, while GM urges the Court to require ownership of the Class Vehicle through the date of final judgment.

Plaintiffs argue that (1) GM's proposed class definition would prejudice the class, and (2) Plaintiffs' proposed clarification is consistent with the definition used in the class notice and at trial. Docket No. 604 (Class Clarif. Reply) at 1–4. Defendant argues that Post-Notice Sellers should not be included in the class definition because (1) Plaintiffs' damage theory requires continued ownership, (2) the class definition at trial require continued ownership, and (3) doing so would allow class members to improperly obtain double recoveries. Class Clarif. Opp. at 3–6.

Both the jury instructions and the class notice provided that class members are "current owners or lessees of a Class Vehicle." Jury Instructions at 3. The parties have different interpretations of the term "current owners." In Plaintiffs' view, "current owners" means class members who owned their vehicle as of May 23, 2022, the date of the Class Notice. Defendant proposes clarifying the definition require continued Class Vehicle ownership through final judgment in order to participate in the class recovery. At the hearing on this motion, a third potential definition was discussed: requiring continued ownership through October 4, 2022, the

date of the jury verdict.

Plaintiffs argued at the hearing that including the Class Notice Date of May 23, 2022 in the clarified definition "doesn't bring in anyone who wasn't already in the class, as of the date of class notice. It simply saves them from being expelled from the class." *See* Docket No. 626 (Feb. 23, 2022 Hr'g Tr.) at 92:11–14. When the Court asked Defendant what "all current owners" meant with respect to "current," Defendant conceded that "there's no question that [current] has to be through the day that the jury verdict was issued. But I think it's current as of the time of final judgment." *See id.* at 100:17–20.

The problem with requiring continued ownership in both Defendant's "final judgment" definition and the "jury verdict" definition is that Class Vehicle owners who received the Class Notice may have sold their Vehicle sometime after May 23, 2022 at less than full market value (given the unremedied Oil Consumption Defect) without realizing that continued ownership was a prerequisite to remaining in the Class; those who sold their Vehicle after the Class Notice Date would be left without a remedy. The Court has serious concerns about excluding such individuals from the Class, particularly when the Class Notice did not clearly forewarn class members that they would be barred from participating in any recovery were they to sell their vehicle after receiving the class notice.

Moreover, Defendant's proposed "final judgment" definition would be particularly burdensome and would unfairly shrink the Class. There will be an ever-increasing number of owners who sell their Class Vehicles as this case drags on through the probable appeals process that could take years. Defendant's proposed definition would likely result in a significantly smaller Class than that alleged in the complaint and certified.

GM's arguments in support of its preferred "final judgment" clarification are not convincing. GM claims that excluding class members who sold their Class Vehicles after trial would be consistent with the cost-of-repair damages awarded by the jury and avoid double recovery. The remedy in this action is based on the cost of replacing the defective piston rings in the Class Vehicles, which—according to the evidence at trial—comes out to $2,700.00. According to GM, if an owner received $2,700 and then sells the vehicle for full market value, he

would obtain a windfall. But this presumes that an owner would be able to sell an unrepaired vehicle for full value. Unsurprisingly, GM has provided no evidence suggesting that former owners have been able to sell their Class Vehicles for full price. In the absence of any evidence to the contrary, GM's theory that former owners would improperly obtain double recoveries is not persuasive.

The Court will not remove post-Notice sellers from the Class given the risk that a former owner who sold his or her vehicle after May 23, 2022, may not have realized that by so doing he or she jeopardized the right to remain in the Class. The Court will safeguard the reliance interests of the post-Notice sellers by allowing owners who were current owners as of the date of the Class Notice to remain in the class, provided they did not opt out. For these reasons, it is appropriate to clarify the "current owners" definition to reflect that "current" means as of the May 23, 2022 date of the Class Notice.

Accordingly, the Court **GRANTS** Plaintiffs' motion to clarify the class definition. The class definition shall be clarified to require Class Vehicle ownership as of May 23, 2022, the date of the Class Notice.

B. Punitive Damages

1. Rule 8 Governs Whether Plaintiffs Sufficiently Sought Punitive Damages

The parties dispute whether the Federal Rules of Civil Procedure or Idaho law govern the appropriate pleading standard for punitive damages. This is because Rule 8(a) and Idaho Code Ann. § 6-1604(2) have markedly different standards. Rule 8(a) provides that "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief; and a demand for the relief sought, which may include relief in the alternative or different types of relief." Fed R. Civ. P. 8(a)(2)–(3). The applicable Idaho law governing punitive damages is Idaho Code § 6-1604(1) and (2), which imposes a heightened pleading standard. *Roost Project, LLC v. Andersen Constr. Co.*, No. 18-cv-238, 2020 WL 3895757, at *2 (D. Idaho July 10, 2020).

Under *Erie*, federal courts sitting in diversity jurisdiction apply state substantive law and federal procedural law. *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003). Where

state law directly conflicts with the Federal Rules of Civil Procedure, federal courts must apply the Federal Rules, not state law. *Clark v. Allstate Ins. Co.*, 106 F. Supp. 2d 1016, 1018 (S.D. Cal. 2000).

Although the availability of punitive damages is "substantive, and Idaho law is therefore controlling in diversity cases," *Roost Project*, 18-cv-238, 2020 WL 3895757, at *2; *Windsor v. Guarantee Tr. Life Ins. Co.*, 684 F. Supp. 630, 633 (D. Idaho 1988) (holding that Idaho law "§ 6-1604(2) is substantive in nature and therefore controlling in federal court in a diversity case"), pleading requirements for punitive damages are procedural rather than substantive. *Masterson v. Cnty. of Alameda*, 2019 WL 3290779, at *3 (N.D. Cal. July 22, 2019); *see Vance ex rel. Wood v. Midwest Coast Transp., Inc.*, 314 F. Supp. 2d 1089, 1090 (D. Kansas 2004) (plaintiff's request for punitive damages was properly pleaded under the Federal Rules and plaintiff was not required to follow Kansas's heightened pleading rule). Plaintiffs are therefore correct that the heightened pleading standard set forth in Idaho Code Ann. § 6-1604(2) does not apply here; instead, that issue is governed by Fed. Rule of Civ. P. 8(a).[4]

Plaintiffs sufficiently pleaded their request for punitive damages under Rule 8(a). "[A] plaintiff may include a 'short and plain' prayer for punitive damages that relies entirely on unsupported and conclusory averments of malice or fraudulent intent." *Rees v. PNC Bank, N.A.*, 308 F.R.D. 266, 273 (N.D. Cal. 2015); *Anaya v. Machines de Triage et Broyage*, No. 18-cv-1731-DMR, 2019 WL 359421, at *5 (N.D. Cal. Jan. 29, 2019); *see also Kelley v. Corrs. Corp. of Am.*, 750 F. Supp. 2d 1132, 1147 (E.D. Cal. 2010) (holding that conclusory allegations are sufficient to state a claim for punitive damages in diversity cases). In the operative complaint, Plaintiffs included in their request for relief for "GM to pay actual and statutory damages (including punitive damages) and restitution to Plaintiffs and other Statewide Class members, as allowable by law." *See* Docket No. 2 (Complaint) at 108; 8AC at 99. Therefore, Plaintiffs have sufficiently pleaded their claim for punitive damages under Federal Rule 8(a) by including a "short and plain" prayer for punitive damages.

[4] If the Idaho code were to apply, Plaintiffs would have been subject to a pretrial motion and hearing for punitive damages.

2. Seventh Amendment Right to Jury Determination of Punitive Damages

As Plaintiffs properly pleaded their request for punitive damages, the next question is whether such damages are determined by the jury or by the judge, which, in turn, raises a constitutional question as to whether either party would have a right under the Seventh Amendment to have the issue of punitive damages tried by a jury.

The Seventh Amendment states, "In Suits at common law, . . . the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." U.S. Const. amend. VII. To determine whether a party is entitled to a jury trial, courts apply a two-step test. "First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature." *Tull v. United States*, 481 U.S. 412, 417–18 (1987); *see also Palantir Techs. Inc. v. Abramowitz*, No. 19-cv-06879-BLF, 2022 WL 16744377, at *8 (N.D. Cal. Nov. 7, 2022) (explaining and applying the test).

"[S]ince the merger of law and equity in 1938, it has become settled among the lower courts that class action [parties] may obtain a jury trial on any legal issues they present." *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999); s*ee also Donovan v. Philip Morris U.S.A., Inc.*, 268 F.R.D. 1, 30 (D. Mass. 2010) (holding that plaintiffs' cause in class action alleging a tobacco company's breach of implied warranty was "like a traditional breach of warranty tort action that requires a jury trial"). The Supreme Court has recognized that "monetary relief is legal" and that actual and punitive damages are "the traditional form[s] of relief offered in the courts of law." *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 352 (1998); *Curtis v. Loether*, 415 U.S. 189, 196 (1974).

The Seventh Amendment requires the jury to decide both the entitlement of punitive damages as well as the amount of the punitive damages award. In *Capital Solutions v. Konica*, for example, the District Court of Kansas concluded that the Seventh Amendment requires the jury be allowed to determine an award of punitive damages as well as the monetary amount of the award. *Cap. Sols. v. Konica Minolta Bus. Sols.*, 695 F. Supp. 2d 1149, 1154 (D. Kan. 2010). *Capital*

Solutions reasoned that:

> The Supreme Court did not explicitly state that the Seventh Amendment applied to the determination of both entitlement to and the amount of punitive damages; but it concluded that punitive damage claims are actions at law under the Seventh Amendment, and it did not carve out the question of the amount of punitive damages in holding that the plaintiff's actual and punitive damage claims should have been tried to a jury. Thus, *Curtis* suggests that *the amount of punitive damages is a question for the jury under the Seventh Amendment.*

Id. at 1153 (emphasis added). Other courts are in accord. *See, e.g.*, *Atlas Food Sys. and Servs., Inc. v. Crane Nat. Vendors, Inc.*, 99 F.3d 587, 595 (4th Cir. 1996) (holding that "the seventh amendment guarantees the right to a jury determination of the amount of punitive damages" because "[a]n assessment by a jury of the amount of punitive damages is an inherent and fundamental element of the common-law right to trial by jury"); *see also Hartford Fire Ins. Co. v. First Nat'l Bank of Atmore*, 198 F. Supp. 2d 1308, 1310–12 (S.D. Ala. 2002) (reaching this same conclusion after reviewing Supreme Court cases). Indeed, in *Pacific Mutual Life Insurance Co. v. Haslip*, the Supreme Court stated that "[p]unitive damages have long been a part of state tort law." *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 15 (1991). The Court noted that the entitlement of punitive damages "has always been left to the discretion of the jury, as the degree of punishment to be thus inflicted must depend on the peculiar circumstances of each case." *Id.* at 16; *see also Cap. Sols.*, 695 F. Supp. 2d at 1154 (citing to *Haslip* in its analysis). Accordingly, "the Seventh Amendment guarantees [plaintiff] the right to have the entirety of its claim for punitive damages, including the determination of the amount, decided by the jury." *Cap. Sols.*, 695 F. Supp. 2d at 1156.

ICPA, Idaho Code Ann. § 48-608(1) provides that "The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations." However, Rule 38, which preserves the right of trial by jury, and the Seventh Amendment dictate the jury to be the factfinder of punitive damages even where state laws have expressly or implicitly provided otherwise. *See* Fed. R. Civ. P. 38(a) ("The right of trial by jury as declared by the Seventh Amendment to the Constitution . . . is preserved to the parties inviolate"); *F.C. Bloxom Co. v. Fireman's Fund Ins. Co.*, No. 10-cv-1603, 2012 WL 5992286, at

*3–4 (W.D. Wash. Nov. 30, 2012) (applying Rule 38 and the Seventh Amendment to find that the jury, not the judge, determines liability for punitive damages under Washington state law even though "[t]here [could] be no question that the Washington legislature intended that a trial judge decide whether to enhance damages and by how much"); *Jones v. United Parcel Serv., Inc.*, 674 F.3d 1187, 1202–03 (10th Cir. 2012) (applying Rule 38 and Seventh Amendment to find that the jury should decide the amount of punitive damages where Kansas law required the court to decide the amount).

3. Waiver of Punitive Damages Claim

Because the Seventh Amendment requires the jury to determine liability for punitive damages, Plaintiffs waived their claim for punitive damages by failing to raise it before trial. More fundamentally, Plaintiffs did not submit a jury instruction on punitive damages, so the case was tried without presenting the issue to the jury. In fact, Plaintiffs expressly stated that a jury instruction on punitive damages was not necessary. When Plaintiffs raised the issue of punitive damages at last August's pretrial conference, Plaintiffs stated, "There should be no jury instruction, Your Honor. It is an issue for punitives. It's an issue for the Court . . . Costs are not discretionary if the Plaintiff prevails there is no jury instruction." *See* Aug. 26, 2022 Hr'g Tr. at 114:18–116:3. The Court issued the proposed jury instructions on September 14, 2022, and gave the parties an opportunity to object on the record and out of the jury's hearing before the instructions were finalized. *See* Docket No. 509. The proposed instructions did not include any instruction on a claim or award for punitive damages, and neither party sought to include an instruction relating to punitive damages. *See* Docket Nos. 514, 516. As a result, the final jury instructions did not mention punitive damages. *See* Docket No. 554 (Final Jury Instructions Order) at 27. The failure to identify punitive damages as a matter for the jury is consequential. *See* Fed. R. Civ. P. 51 (a) and (c). The matter was never submitted to the jury. The jury was not instructed on punitive damages. There was thus no way to comply with Rule 38 and the Seventh Amendment.

Further, pursuant to the Court's Standing Order on Civil Pretrial Instructions, the parties must file a joint pretrial conference statement at least 21 days prior to the final pretrial conference.

The statement must contain "A statement of all relief sought, particularly itemizing all elements of damages claimed." *See* Standing Order on Civil Pretrial Instructions at 1. The Ninth Circuit has also "consistently held that issues not preserved in the pretrial order have been eliminated from that action . . . The very purpose of the pretrial order is to narrow the scope of the suit to those issues that are actually disputed and, thus, to eliminate other would-be issues that appear in other portions of the record of the case." *S. Cal. Retail Clerks Union v. Bjorklund*, 728 F.2d 1262, 1264 (9th Cir. 1984).

Plaintiffs did not "itemize" their claim for punitive damages in the Joint Pretrial Statement, only mentioning that Plaintiffs "seek monetary damages measured by the difference between the value of the allegedly defective Class Vehicles received and the Value of the Class Vehicles without the alleged defect." *See* Docket No. 451 (Joint Pretrial Stmt) at 3. Nor did Plaintiffs refer to punitive damages in their Trial Brief. *See* Docket No. 450. Consequently, the Court did not discuss punitive damages in its Pretrial Order. *See* Docket No. 476 (Final Pretrial Conference Order).

By not seeking punitive damages in the Joint Pretrial Statement or elsewhere in the pretrial briefing or in instructing the jury, Plaintiffs have waived their request for punitive damages.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiffs' motion for clarification of the class definition. The Court clarifies the class definition to require Class Vehicle ownership as of May 23, 2022, the date of Class Notice:

> **California Class:** All current owners or lessees of a Class Vehicle that was purchased or leased in new condition in the State of California ***as of May 23, 2022.***
> **Idaho Class:** All current owners or lessees of a Class Vehicle that was purchased or leased from a GM-authorized dealer in the State of Idaho ***as of May 23, 2022.***
> **North Carolina Class:** All current owners or lessees of a Class Vehicle that was purchased or leased in the State of North Carolina ***as of May 23, 2022.***

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The Court **DENIES** Plaintiffs' motion for punitive damages under the Idaho Consumer Protection Act.

This order disposes of Docket Nos. 587 and 589.

IT IS SO ORDERED.

Dated: June 8, 2023

EDWARD M. CHEN
United States District Judge

United States District Court
Northern District of California